DOCUMENT RESUME

ED 319 845 UD 027 449

AUTHOR Stronge, James H.; Helm, Virginia M.
TITLE Residency and Guardianship Requirements as Barriers to the Education of Homeless Children and Youth.
PUB DATE 17 Apr 90
NOTE 38p.; Paper presented at the Annual Meeting of the American Educational Research Association (Boston, MA, April 17, 1990).
PUB TYPE Speeches/Conference Papers (150) -- Reports - Research/Technical (143) -- Reports - Evaluative/Feasibility (142)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Access to Education; *Disadvantaged Youth; Educational Legislation; *Federal Legislation; *Homeless People; Incidence; Policy Formation; *Residence Requirements; State Legislation; Student Needs; Surveys
IDENTIFIERS Guardianship; *Stewart B McKinney Homeless Assistance Act 1987

ABSTRACT

The purpose of this study was to ascertain the impact of residency and guardianship requirements on the provision of educational opportunities to homeless children and youth. Specifically, the study sought to identify existing legal entanglements, from both state and local policy sources, that resulted in the denial of a free, appropriate public education to these students. In addition, remedies to these problems are analyzed and recommendations made to alleviate their recurrence. Section 1 includes the following parts: (1) "Incidence of Homelessness"; (2) "Definitions of Homelessness"; and (3) "Federal Legislation for the Homeless." Section 2 presents the methodology of the study, which included a survey of homeless service providers and public school officials and a case law review. Section 3 discusses the results of the survey and the case law review, which included an exploration of cases specifically involving residence and guardianship requirements as barriers to education. The study found that the educational provisions of the McKinney Homeless Assistance Act are essentially non-regulatory, relying on meager funding to motivate states to confront the problems of educating homeless children and youth. In addition, since future funding is uncertain, advocates for the homeless may have the greatest impact by focusing their efforts on state legislatures and state education agencies to remove or minimize the residency and guardianship barriers to education. Three tables and three figures are included. A list of 28 references is included. (JS)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED319845

Residency and Guardianship Requirements as Barriers to the Education of Homeless Children and Youth

by

James H. Stronge
Associate Professor of Education
School of Education
College of William and Mary
Williamsburg, Virginia

Virginia M. Helm
Professor of Education
College of Education
Western Illinois University
Macomb, Illinois

Presented at the Annual Meeting of the
American Educational Research Association
Boston, Massachusetts
April 17, 1990

Running Head: EDUCATION OF HOMELESS

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

James H. Stronge
William + Mary

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

BEST COPY AVAILABLE

UD 027 449

Residency and Guardianship Requirements as Barriers to the Education of Homeless Children and Youth

Homelessness is not a new phenomenon. What is new, however, is the number of homeless families with school-age children that has emerged as the fastest growing segment of this population within the last decade (Jackson, 1989). This group of "new" homeless is generally younger and better educated than stereotypical homeless, often with female-heads-of-family, and predominantly of racial minorities (Stoner, 1984; Wright and Lam, 1987). Recent studies have suggested that as many as one-third to one-half of the homeless population is composed of women and children (Bassuk and Rosenberg, 1988; Hagen, 1987). The provision of appropriate social services, including education, to this new and expanding population of homeless is a severe challenge facing public policy makers.

Homeless children and youth face a multiplicity of obstacles when attempting to register for and attend school which, if not rectified, result in the delay if not denial of an educational opportunity. Adding to the complication of educating dependent children of homeless families is the growing number of homeless independent youth (Adams, Gullotta, and Clancy, 1985; Beatty and Carlson, 1985; Kaufman, 1987). The increasing number of homeless

families and independent homeless youth has served to focus attention on the educational problems these students face.

The purpose of this study was to ascertain the impact of selected problems, namely residency and guardianship requirements, on the provision of educational opportunities to homeless children and youth. Specifically, the study sought to identify existing legal entanglements, from both state and local policy sources, that resulted in the denial of a free, appropriate public education to these students. Additionally, remedies to these problems were analyzed and recommendations made to alleviate their recurrence.

Background

Incidence of Homelessness

Statistics cited by advocacy groups for the homeless and by governmental agencies vary widely regarding the incidence of homelessness. The National Coalition for the Homeless (1989) estimated that in 1983 there were approximately 2-3 million homeless individuals in the United States. This study supported data generated from a survey conducted in 1982 by the Communities for Creative Non-Violence (cited in Main, 1988) in which a comparable estimate of the incidence of homelessness was provided. Contrasting starkly with these estimates were the results of a separate survey conducted in 1983 by the U.S. Department of Housing and Urban Development (HUD) in which homelessness was estimated at 250,000 to 350,000 in the United States on any given day. A 1986

cross-check of the HUD study supported the accuracy of the HUD figures, and estimated that the number had increased to 700,000 by 1988 (Main, 1988). In an effort to more accurately reflect the severity of the problem of homelessness, the U.S. Census Bureau, as part of the 1990 census count, assigned approximately 15,000 workers on the night of March 20 to make an actual count. In every city with 50,000 or more residents and in smaller communities and rural areas where local officials had reported a homeless population, the census workers were assigned to visit temporary housing locations as well as count people on the streets and in abandoned buildings. While the results of this count will not be made available until late 1991, controversy already is emerging regarding the procedures and accuracy of the count.

The number of school-age homeless children and youth also is disputed. The National Coalition for the Homeless estimated that in 1988 the school-age homeless population ranged between 500,000 and 750,000. Of these, approximately 43% were thought to not be attending school on a regular basis (cited in Jennings, 1989). In a report to Congress by the U.S. Department of Education in which a compilation of statistical information from 1988 state final reports on homelessness was summarized, an estimate was made of approximately 220,000 homeless school-age children throughout the United States. Of these, 157,000 were identified from actual counts made by the states with the remaining numbers derived from estimates. Approximately 67,000, or 30.8%, children were reported

as not attending school (U.S. Department of Education, 1989). These data are summarized below.

Education of Homeless Children and Youth
Summary of State 1988 Final Report

School Level	f	%
Elementary (K-6)	84,617	38.4
Middle/Junior High (7-9)	44,747	20.3
High School (10-12)	58,338	26.4
Not specified	32,952	14.9
Total	220,654	100.0
Children and Youth*		
Attending School	149,616	69.2
Not Attending School	66,590	30.8
Total	216,206	100.0

* Total number of children and youth reported by category and attending/not attending school do not match due to apparent disparities in State reporting.

Definitions of Homelessness

In addition to the obvious complexities associated with counting a transient and often hidden population such as the homeless, a fundamental problem in determining how many homeless individuals are located in a given locality is that of definition. Who are the homeless? Do we count only those individuals who literally sleep on the streets? What about those in temporary housing or shelters? How long can individuals remain in one location (e.g., government subsidized hotels) and still be

considered homeless? Should individuals who are forced to take up residence with relatives and friends be considered homeless? These and a myriad of similar questions reflect the enigmatic nature of acquiring a better understanding of the nature and needs of the homeless.

Attempts made in recent years to provide an operational definition of homelessness have served to further compound the issue. Definitions range from ones that follow a strict interpretive sense of homelessness to those that provide a more expansive view of the term. For example, Kaufman (1984) defined homelessness as "a condition wherein an individual on a given night has no place to sleep and is forced to be on the street or seek shelter in a temporary facility" (p. 21), while Caro (cited in Rivlin, 1986) defined homeless as individuals who are "without an address which assures them of at least the following 30 days of sleeping quarters which meet minimal health and safety standards" (p. 3). Hope and Young (1986) described a homeless person as someone sleeping or living in: a) limited or no shelter for any length of time; b) shelters or missions run by religious organizations or public agencies for any length of time; c) cheap hotels or motels when actual length of stay, or intent to stay, is 45 days or less; d) other unique situations that do not fall into categories 1-3, and the actual length of stay or intent to stay is 45 days or less. Additionally, there have been suggestions for broadening the definition and number of homeless to include people

at-risk of being evicted or having to move, who do not know where they will be living in another month.

Federal Legislation for the Homeless

The Stewart B. McKinney Homeless Assistance Act of 1987 (P.L. 100-77) was enacted as America's first comprehensive emergency aid program for the homeless. The Act contains approximately 20 different programs, including educational services, designed to lessen the plight of the homeless.

In addition to the provision of services, the Act provides some clarity to the debate over definitional issues. Title I of the Act provides a general definition of a homeless individual as one who (1) lacks a fixed, regular and adequate nighttime residence, or (2) lives in (a) a shelter, (b) an institution (other than a prison or other institutionalized facility), or (c) a place not designed for or ordinarily used as a sleeping accommodation for human beings. While the definition leaves open to discussion many related questions, it does provide a semblance of continuity to identification of and subsequent service to homeless individuals.

The educational provisions of the McKinney Act, contained in Subtitle B - Education for Homeless Children and Youth, is based on C o n g r e s s i o n a l p o l i c y t h a t :

1) each State educational agency shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate public education which

would be provided to the children of a resident of a State and is consistent with the State school attendance laws; and

2) in any State that has a residency requirement as a component of its compulsory school attendance laws, the State will review and undertake steps to revise such laws to assure that the children of homeless individuals and homeless youth are afforded a free and appropriate public education. (Stewart B. McKinney Act, Subtitle B, Section 721 [1, 2] located at 42 USC 11431)

More specifically, as it relates to the issue of residency, the basic standard employed in Title VII-B of the Act is that homeless children and youth "... should have the same access to elementary and secondary education as children whose parents are fully established residents of the State (U.S. Department of Education, 1987, p. 1). Each State is required to adopt a plan to provide for the education of each homeless child or youth, and that, to the extend practicable under established state law, each local educational agency within the State will comply with the requirements. The requirements related to residency include the following:

(3) The local educational agency of each homeless child or youth shall either -

(A) continue the child's or youth's education in the district of origin for the remainder of the

school year, or

(B) enroll the child or youth in the school district where the child or youth is actually living;

whichever is in the child's best interest or the youth's best interest. [PL100-79, Subtitle B, Section 722 (e) (3) located at 42 USC 11432]

As it relates to the issue of guardianship, the Act authorizes the state education agency, the local education agency, and the parent or guardian of the homeless child to make determinations required under the law. Where parents are not available, the Act authorizes the substitution of the applicable social worker in the decision making process. Additionally, the State is required to provide procedures for the resolution of disputes regarding the educational placement of homeless children and youth. The Act further requires that each local educational agency, in implementing these procedures, give placement consideration to each homeless child or youth regardless of what the parental status may be:

(4) The choice regarding placement shall be made regardless of whether the child or youth is living with the homeless parents or has been temporarily placed elsewhere by the parents.

(5) Each homeless child shall be provided services comparable to services offered to other students in the

school selected according to the provisions of paragraph (3), including educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; and school meals programs. (Stewart B. McKinney Act, Subtitle B, Section 722 [E] [4, 5] located at 42 USC 11432)

Methodology of the Study

The analysis of public policy addressed in this study focuses exclusively on the issues of residency and guardianship as barriers to the education of homeless children and youth. Data were collected from two primary sources: a statewide survey of homeless education service providers conducted in Illinois, and a review of applicable case law. Additionally, interviews were conducted with administrators and teachers in selected homeless education programs located in various geographic regions of the country.

Survey of Homeless Service Providers and Public School Officials

The Illinois statewide survey[1] of homeless service providers

[1] The survey of Illinois homeless service providers was designed and implemented by B. Goitern as part of the research project, "The Children of Homeless Families in Illinois and Their Educational Status," conducted by Bradley University, for and funded through, the Illinois State Board of Education. Goitein, Stronge, Fraker, Westfall, and Tenhouse (1989) were the principal

and public school officials was conducted to ascertain the number of homeless children and youth residing in the state, and to determine the degree to which potential barriers posed problems to their education. Included among the potential barriers identified for inclusion in the survey were the issues of residency and guardianship.

The first stage of the survey involved screening interviews with government representatives of all Illinois cities with a population of at least 2500 or that are county seats to determine the location of homeless service providers and to acquire estimates of the number of homeless children and youth. The 1987-1988 Illinois Municipal Directory was used as the source for identifying these cities. Of the 404 cities with a population over 2500, 35 cities were among the largest cities in the state, and had some type of homeless shelter program. These cities were excluded from the initial screening and automatically included in the indepth follow-up interviews. Thus, 369 cities received the screening interviews. Additionally, 20 county seats with populations of less than 2500 were included in the screening.

Following the completion of the screening interviews, indepth interviews were conducted with representatives from all cities and towns that either had a homeless shelter program, that reported some homeless children in the initial screening, or that were

---

authors of the report.

located in 11 selected counties believed to include higher levels of homelessness despite their not reporting homeless children or shelters in the initial screening. Ultimately 165 cities were targeted for inclusion in the indepth survey of homeless service providers.

All school districts in the state as identified by the Illinois State Board of Education were screened to determine which districts had identified homeless children and youth in their service area. These interviews were typically conducted with school district personnel. In cases where the district officer did not have access to the necessary information, personnel at individual schools were contacted. Of the 972 public school districts located in Illinois in 1988-1989, 214 were targeted for inclusion in the indepth survey.

Methodology for Case Law Review

A review was made of decisions and/or pleading of cases related to the issue of educating homeless children and youth. This review revealed eight such proceedings, five of which are reported in the results section of this paper. Additionally, a thorough search for cases specifically citing the McKinney Homeless Assistance Act was conducted using the computer-accessed data base, WESTLAW. That search of reported decisions in all federal and state courts identified one case, Orozco v. Sobol (1989), which is reported in this paper.

Results of the Study

Survey of Homeless Service Providers and Public School Officials

The results of the sections of the Illinois survey of homeless service providers and public school officials regarding the issues of guardianship and residency are presented in Tables and Figures 1-3. The count column in the tables reflects the number of cities and school districts responding to the indepth surveys. The count for each item varies depending on the number of cities or school districts responding to the particular item. Additionally, as explained by Goitein et al. (1989):

> The surveys produced multiple respondents for both cities and school districts. For example, several Homeless Service Personnel may have been interviewed for a single city. In this case the respondents of these multiple respondents were averaged for a single response. (p. 118)

Information regarding the issue of legal guardianship is presented in Table 1 and Figure 1. The majority (60.00%) of school personnel responding to the item indicated that guardianship was not a problem in providing service to homeless children and youth. Homeless service personnel were fairly evenly divided over whether the issue was not a problem (43.36%) or a moderate problem (42.48%).

Table 1 and Figure 1 about here

The survey participants were asked to respond to two questions regarding the level of problem posed by the issue of residency to the education of homeless children and youth: a) residency requirements under state law and b) school district residency requirements. Residency requirements under state law were perceived as not a problem by a majority (60.00%) of school officials. Homeless service personnel were, again, fairly evenly divided over whether the issue was not a problem (44.35%) or a moderate problem (40.32%). Only 12.68% of the school officials and 15.32% of homeless service personnel considered the matter to be a great problem.

Table 2 and Figure 2 about here

Regarding the question of school district residency requirements, an even greater percentage of the school officials responding to the survey indicated that the issue was not a problem (69.76%). A plurality of the homeless service personnel indicated that the matter was not a problem (43.36%). However, a substantially higher proportion of the homeless service providers

viewed the school district residency requirements as either a moderate problem or a great problem (56.63%) as compared with their counterparts in the public schools (30.24%). Additionally, a greater percentage (20.35%) of the homeless service providers viewed the school district residency requirements as a greater problem than they did the state residency requirements (15.32%).

Table 3 and Figure 3 about here

Care Law Analysis

There is a relatively small body of case law involving the educational rights of homeless children. In fact, a review of the literature identifies only eight reported cases specifically involving residency and guardianship requirements as barriers to education. Four of these eight cases, furthermore, were brought prior to the passage of the McKinney Homeless Assistance Act in July, 1987, and might have been decided differently had they been initiated after that legislation was enacted.

Pre-McKinney Act Cases. The first reported case pertaining to residency requirements applied to homeless children was Richards v. Board of Education of Union Free School District Number 4 (1985). In this administrative ruling Ambach, the New York Commissioner of Education, the plaintiff mother, Mary Richards, was successful in persuading authorities that her children were entitled to receive

an education in the Port Chester-Rye school district where they had previously lived and attended school. Perhaps less significant than the actual ruling itself is the reasoning upon which the decision was based. "It is well settled that a residence is not lost until another residence is established through both intent and action expressing such intent (Matter of Wadas, 21 Ed Dept Rep 577 (1982); Matter of Lundborg, 12 id. 268 (1973); Matter of Callahan, 10 id. 66 (1970): (p. 42). The Commissioner found that Mrs. Richards' intent to remain in Port Chester was clear: she reported weekly to the Department of Social Services office in that community, requesting housing there; she kept a post office address there; she went to church there and she had extensive family there. Ambach ruled she still technically resided in Port Chester because she never established nor gave evidence of intending to establish permanent resident elsewhere. Rather, she was simply temporarily absent from her previous permanent residence. The Commissioner firmly declined, however, to establish through this ruling the general principle that all homeless children would be entitled to attend school in their former district. In fact, he specifically stated that until the legislature enacted legislation "specifically addressing the education of homeless children, the residence of such children must be determined on a case-by-case basis."

Six months later, a New York federal district court ruled against Mrs. Delgado who, like Mrs. Richards, sought to enroll her children in the school district where they had attended school

prior to becoming "homeless." Neither Freeport, where the family had lived for several years, nor the Roosevelt district, in which they were temporarily housed, would admit the Delgado children because no permanent residency was established in either community. A different line of reasoning, however, led the Delgado court to a different decision from Richards. In this case, the court refused to overturn (or "set aside") any ruling of a board of education or superintendent regarding residency unless it were arbitrary, capricious, or unreasonable. Because the Freeport decision to refuse admission to the Delgado children was firmly grounded in state residency laws, the court found that decision not to be arbitrary, capricious or unreasonable. The children were, however, entitled to attend school in the Roosevelt district where they currently resided, regardless of the length of their stay. Richards was determined by the court not to be precedential, in that Mrs. Delgado failed to establish similarly clear and strong ties to her previous community. We cannot resist noting the creative argument of the Freeport attorney who attempted to ridicule the intent of permanency as an element of residency by observing that "most people's residences are a transition till they acquire a new residence, and the only truly permanent residence is in a burial plot" (Respondent Freeport Union Free School District Supplemental Memorandum of Law, p. 5).

Freeport's "victory" in refusing to educate prior residents who became homeless and lived nearby did not put an end to the school

district's legal problems, however. Shortly after that, the district expelled (for no longer meeting residency requirements) the five children of a family who had lived in Freeport for 10 years prior to eviction from their apartment and placement by the social services agency in eight shelter locations within four months. In this case, Mason v. Board of Education, Freeport Union School District, the Supreme Court of Nassau County in New York ruled that bodily presence established children's residence for attendance purposes. As in Delgado, then, the temporary residence rather than prior residence determined school placement of children even though the parent requested placement in the district where the children had previously attended school.

Where a family with four children lived in a tent in a state park within the boundary of Hingham, Massachusetts, the school superintendent refused to enroll the children. His reasoning was that they were living on state property and, therefore, not legaly residents of the local community. The Massachusetts Commissioner of Education disagreed, ordering the school district to educate children living within the district boundaries "irrespective of their living situation" (see Jennings, 1988).

In New Jersey, the town of Wrightstown enacted a city ordinance limiting motel residence to 30 days. In September, 1987, the town ordered a motel owner to evict several homeless families placed there for temporary shelter by the welfare board. The public advocate seeking an order to restrain the city from enforcing the

ordinance, charged that "by enforcing the 30 day limit against plaintiffs, defendant [city] is attempting, through exclusionary zoning, to expel homeless children from its borders and thereby protect its educational budget from any increased costs." By November, 1987, the city had deleted the discriminatory provision, resulting in a dismissal of the complaint brought in Vingara et al. v. Borough of Wrightstown, 1987. (Although this suit was brought and dismissed soon after passage of the McKinney Homeless Assistance Act, it is discussed with the pre-McKinney cases because no claims were made based on that legislation.)

Post-McKinney Act Cases. Two months after the passage of the McKinney Homeless Assistance Act, Patti Tynan petitioned Thomas Sobol, the new Commissioner of Education for the state of New York, to require the Spackenkill Union Free School District to admit her two children to that school district. As a public aid recipient, temporarily housed in a motel while seeking permanent low income housing in the area, Ms. Tynan's children had been refused admission to the public schools in Spackenkill based on their lack of permanent residency in the district. On September 22, 1987, Commissioner Sobol ordered the Spackenkill school district to admit the children temporarily, pending the appeal process. On July 1, 1988, Sobol held in Tynan v. Wooley that the Tynan's residence, even though temporary and in a motel, was their official residence for purposes of school district attendance. And he noted new state legislation going into effect one week later which would alleviate

some of the problems faced by school districts and homeless families similar to the Tynans.

In November, 1987, Ms. Harrison brought suit against the Peekskill school district for refusing to allow her children to continue attending school there after their father's landlord required them to leave his residence (in Peekskill); they returned to live with their mother in the Mahopac motel where she had been living after a fire destroyed their apartment in another town (Harrison v. Sobol, 1988). Because Mahopac was not in the Peekskill School District, local school officials notified Ms. Harrison that her children were no longer eligible to be enrolled in the district. When Westchester Legal Services filed suit for Ms. Harrison, they not only sought declaratory and injunctive relief (an order affirming the children's right to attend school in Peekskill) but also charged both the school district and Commissioner Sobol with denial of due process for failure to provide written notice of the factual and legal grounds for excluding the Harrison children and for failure to inform her of her right to a hearing and to a decision by the Commissioner.

The Peekskill district agreed to continue educating the Harrison children pending the legal proceedings. In July, 1988, the New York Board of Regents approved a new regulation allowing parents of displaced homeless children to determine whether their children would be enrolled in the district of prior attendance or in the district in which they were currently, if temporarily,

living. So, by the time the judge issued his ruling in December, 1988, earlier petitions for relief were rendered moot. Commissioner Sobol and the school district were, however, held accountable for denial of due process, though nominal damages were limited to $1.00 and punitive damages were not awarded because the loss of five days of school was held too trivial for such an award.

The third post-McKinney Act case was filed about the same time as the Harrison suit and was also brought by the Westchester Legal Services for another homeless family. Orozco v. Sobol, decided one month after Harrison, parallels the latter case in arguments and outcome. Once again, a welfare family was temporarily housed in a motel by a social service agency (Westchester County Department of Social Services). Though living within the Yonkers school district, the mother (Ms. Arroyo) sought to have her daughter, Sixta, enrolled in Mt. Vernon, a district of previous residence. Refused admission there, she next sought to enroll Sixta in Yonkers, which also denied admission because she was not considered a Yonkers resident. Ms. Arroyo, like Ms. Harrison, brought charges of denial of due process in the federal district court in September, 1987. Before the court issued its ruling in January, 1989, she had moved (in March, 1988) back to Puerto Rico and -- as mentioned in the discussion of Harrison -- in May, 1988, New York had adopted regulations that rendered the merits of the case moot. The charge against Commissioner Sobol for allegedly allowing districts to deny due process by their failure or refusal to notify

parents of rights to hearing and appeal was not dismissed; the outcome of that is not relevant to our discussion here, however.

Discussion and Recommendations

The primary -- though certainly not the only -- barrier to educating children in homeless families derives from state statutory residency requirements and the difficulty of determining residency for homeless families who may move from one temporary shelter or location to another. Specifically, most state compulsory attendance laws mandate that children attend school in the district in which they or their parents/guardians reside. Homeless families, however, cannot or do not always remain intact; to minimize the effect of this circumstance on the education of homeless children, the McKinney Act further specifies that state plans shall determine school placement of homeless children "regardless of whether the child or youth is living with the homeless parents or has been temporarily placed elsewhere by the parents" [PL 100-77, Subtitle B, Sec 722, (e) (3) (4)]. Even when they can remain together, homeless families may move -- or be moved by the social service agency responsible for locating housing for them -- with considerable frequency. Once they have left their previously permanent residence, they have had difficulty convincing local school districts that they are "residents" in the district where they may be (very) temporarily living; simultaneously, the districts in which they previously lived often refuse continued

educational services to their children because they no longer reside within the district. Disputes about residency were frequent, prior to the McKinney Act. And when such disputes were brought to the courts, the latter chose to deal with each on a case-by-case basis rather than establish general principles or guidelines; this led, not surprisingly, to decisions that seemed inconsistent in their outcomes.

With the passage of the McKinney Homeless Assistance Act, however, such disputes, while they continue to occur, seem to be resolved before complaints are brought to the courts. That, of course, is not surprising, given the McKinney Act requirement that each state develop a State plan to provide for education of homeless children and youth which includes procedures for the resolution of disputes regarding the educational placement of homeless. Furthermore, the State plans are to require local education agencies either to allow homeless children to continue their education in the school district of origin for the remainder of the year or to enroll the children in the school district where they are actually living, "whichever is in the child's best interest . . ." [PL100-77, Subtitle B, Sec. 722, (e) (3)].

The problem is that Subtitle B of the McKinney Act (the "Education for Homeless Children and Youth" provision) merely attempts to solicit states' participation by funding nominal grants to support offices for carrying out Congressional policy. The McKinney Act is neither written nor funded to be regulatory or

seriously enforced; and it is not even sufficiently funded to motivate apathetic or reluctant state officials into compliance with the guidelines. As of this writing, "the future of funding and enforcement under the McKinney Act is doubtful" (First and Cooper, 1989). In short, the responsibility for protecting the educational rights of homeless children and youth is largely left to individual states. Some states like New York, Connecticut, Pennsylvania, Texas, and Florida have moved with the alacrity that demonstrates a genuine concern for the educational needs of homeless children (or perhaps sufficient litigation to prompt them to legislative and administrative action). Too many other states have done little more than submit minimally acceptable state plans in order to receive the federal funding appropriate for implementing those plans (see First and Cooper, 1989).

Absent efforts within or outside Congress to continue or, preferably, increase funding of the McKinney Homeless Assistance Act so that states have greater incentive to implement it, other means must be developed to assure equal educational opportunities for homeless children and youth. The literature indicates a realistic reluctance to use litigation as the primary source of action. Litigation is always slow, sometimes hard to fund, and frequently an inefficient mode of accomplishing what is better achieved by statutory or administrative law or by vigorous advocacy, given a basically non-controversial issue such as protecting the rights of the handicapped or the homeless.

Who can provide the kind of incentives or initiative necessary to bring about revisions in state statutory or administrative law to secure greater educational opportunity for homeless children and youth? Perhaps one of the most successful educational interest groups -- the special education advocates and lobbyists -- may offer potential power, or at least influence. Russell and Williams (1988) suggested that homelessness may be a "breeding-ground" for handicapping conditions. Physical and environmental factors can contribute to emotional disturbances and behavioral problems, in addition to developmental lags that can occur with temporary, inadequate living conditions and the insecurities associated with them. If homeless advocates can persuade special education advocates that 1) some homeless children, simply by the law of averages, will be handicapped and 2) homeless conditions can contribute to development of handicapping conditions, an alliance might be formed that would be mutually beneficial.

A closely related interest group with whom homeless advocates might join forces are those concerned about at-risk students. Certainly, homeless children and youth are at risk of educational failure and therefore in need of special support. Both the at-risk constituency and the special education constituency have established their influence with state and federal legislatures. We would encourage the homeless constituency and their advocates to consider joining forces with these constituencies in order to gain the quickest and most direct access to legislators.

With or without the alliances suggested above, what should advocates for the education of homeless children and youth be seeking, given the slow implementation of the McKinney Act and the lack of leadership from the Department of Education? From the Goiten et al. (1989) study in Illinois, several recommendations are especially appropriate for states slow to implement their state plans. Efforts should be directed either to state legislatures or state education offices, depending on the specific action sought. First, state residency and guardianship laws should be revised to remove residency and guardianship barriers for homeless children and youth. This would include provisions addressing the needs of children living apart from parents or guardians because of their families' homeless condition. Second, local school districts could be encouraged or mandated to develop regional enrolment plans to accommodate homeless children who are often forced to move with some frequency within a relatively small geographical area which, nevertheless, may involve different school districts. Third, major efforts should be encouraged to develop among educators and among homeless families an awareness of the educational needs and rights of homeless children and youth. Public awareness programs and in-service programs for teachers and administrators should be developed and implemented immediately.

Because incentives may be only marginally effective, depending upon the financial attractiveness of those incentives, mandates can bring about the necessary change more quickly. Those mandates are

most likely to come from state legislatures, who may enact applicable laws and delegate to the state education agencies the issuance of rules and regulations and monitoring of their implementation. In any event, the literature to this point appears to suggest that advocacy rather than litigation is the strategy of choice. And advocacy at the state level is more manageable and perhaps more effective than at the federal level.

Finally, states can encourage greater cooperation between and among school districts, to include sharing of experimental plans, of ideas, and of progress in working with other districts and agencies serving homeless families and independent homeless youth. The development of exemplary programs, funded by the McKinney Act; will be helpful in this endeavor (Federal Register, 1990). While dissemination of progressive programs through the U.S. Department of Education will be helpful, this effort will not replace the need for local and regional cooperation.

In summary, the educational provisions of the McKinney Homeless Assistance Act are essentially non-regulatory, relying on meager funding to motivate states to begin confronting the problems of educating homeless children and youth. Since future funding is uncertain, advocates for the homeless may have the greatest impact by focusing their efforts on state legislatures and state education agencies to remove or minimize the residency and guardianship barriers to education for homeless children and youth. In this effort, they will be the more successful as they garner support

from at-risk and special education interest groups with whom they have overlapping and closely related concerns. We can only hope that efforts at the state level will be more vigorously undertaken than they have been at the federal level.

References

Adams, G. R., Gullotta, T., & Clancy, M.A. (1985). Homeless adolescents: A descriptive study of similarities and differences between runaways and throwaways. Adolescence, 20, 715-724.

Bassuk, E., & Rosenberg, L. (1988). Why does family homelessness occur? American Journal of Public Health, 78, 783-788.

Beatty, J., & Carlson, H. (1985). Street kids: Children in danger. Paper presented at the Annual Convention of the American Psychological Association, Los Angeles, CA. (ERIC Document Reproduction Service No. ED 284 082)

Delgado v. Freeport Public School Dist., 499 N.Y.S. 2d 606 (1986).

Federal Register (1990, March 19). Vol. 55, No. 53, 10188-10190, Washington, DC: U.S. Government Printing Office.

First, P. F. and Cooper, G. R. (1989). The McKinney Homeless Assistance Act: Evaluating the response of the states. Paper presented at the Annual Meeting of National Organization for Legal Problems of Education. San Francisco, November, 1989.

Goiten, B, Stronge, J., Fraker, F. Westfall, B., and Tenhouse, C. (1989). The Children of homeless families in Illinois and their educational status (Report to the Illinois State Board of Education). Peoria, IL: Bradley University, Institute for Urban Affairs and Business Research and College of Education and Health Sciences, Center for Research and Service.

Hagen, J. L. (1987). Gender and homelessness. Social Work, 32, 312-216.

Harrison v. Sobol, 705 F. Supp 870 (S.D.N.Y 1988).

Hope, M. & Young, J. (1986). The faces of homelessness. Lexington, MA: D.C. Heath and Company.

Jackson, S. (1989). The education rights of homeless children. Cambridge, MA: Center for Law and Education.

Jennings, L. (1989, February 8). Report expected to sharpen policy debate on homeless. Education Week, pp. 1, 19.

Jennings, L. (1988, September 28). Panel says children fastest growing portion of homeless. Education Week, p. 5.

Kaufman, N. (1984). Homelessness: A comprehensive policy approach. Urban and Social Change Review, 17(1), 21-26.

Mason v. Board of Education, Freeport Union School District, No. 2865/87, N. Y. Sup. Ct. mem. op. April 22, 1987.

Main, T. (1988, May). What we know about the homeless. Commentary, pp. 26-32.

National Coalition for the Homeless. (1989). Homeless in America: A summary. Washington, DC: Author.

Orozco v. Sobol, 704\3 F. Supp. 1113 (1989).

P.L.100-77, Stewart B. McKinney Homeless Assistance Act (1987). Subtitle B, Education for Homeless Children and Youth, P.L. 100-77, 42 USC, 11431-11435.

Richards v. Board of Education of Union Free School District Number 4, No. 11490, N.Y. Dept. of Education (1985).

Rivlin, L. (1986). A new look at the homeless. Social Policy, 16(4), 3-10.

Russell, S. C. & Williams, E. U. (1988). Homeless handicapped children: A special education perspective. Children's Environments Quarterly, 5, 3-7.

Stoner, M.R. (1984). An analysis of public and private sector provisions for homeless people. Urban and Social Change Review, 17, (1), 3-8.

Tynan v. Wooley, No. 12010, N. Y. Dept. of Education (1988).

U. S. Department of education. (1989, February). Report to Congress: Education of homeless children and youth - State grants. Washington, DC: Author.

U.S. Department of Education (1987, November). Non-regulatory guidance to assist state educational agencies in administering state activities designed to meet the special educational needs of homeless children and youth under Title VII, Subtitle B of the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77. Washington, DC: Author.

Vingara et al. v. Borough of Wrightstown, Civil Action No. 87-7545 (S. Ct. N. J. filed September 29, 1987).

Wright, J. D., & Lam, J. A. (1987). Homelessness and the low-income housing supply. Social Policy, 17(4), 48-53.

Table 1

Question: Lack of papers of legal guardianship

Respondent Group	Count	$\bar{X}$*	SD	Great Problem f	Great Problem %	Moderate Problem f	Moderate Problem %	Not a Problem f	Not a Problem %
Homeless Service Personnel	113	2.374	0.673	16	14.16%	48	42.48%	49	43.36%
School Personnel	205	2.522	0.642	17	8.29%	65	31.71%	123	60.00%

*Responses have been scaled from 1 through 3. The responses Great Problem = 1 and Not a Problem = 3. Therefore the higher the amount the lesser degree of the problem.

Figure 1

Question: Lack of papers of legal guardianship

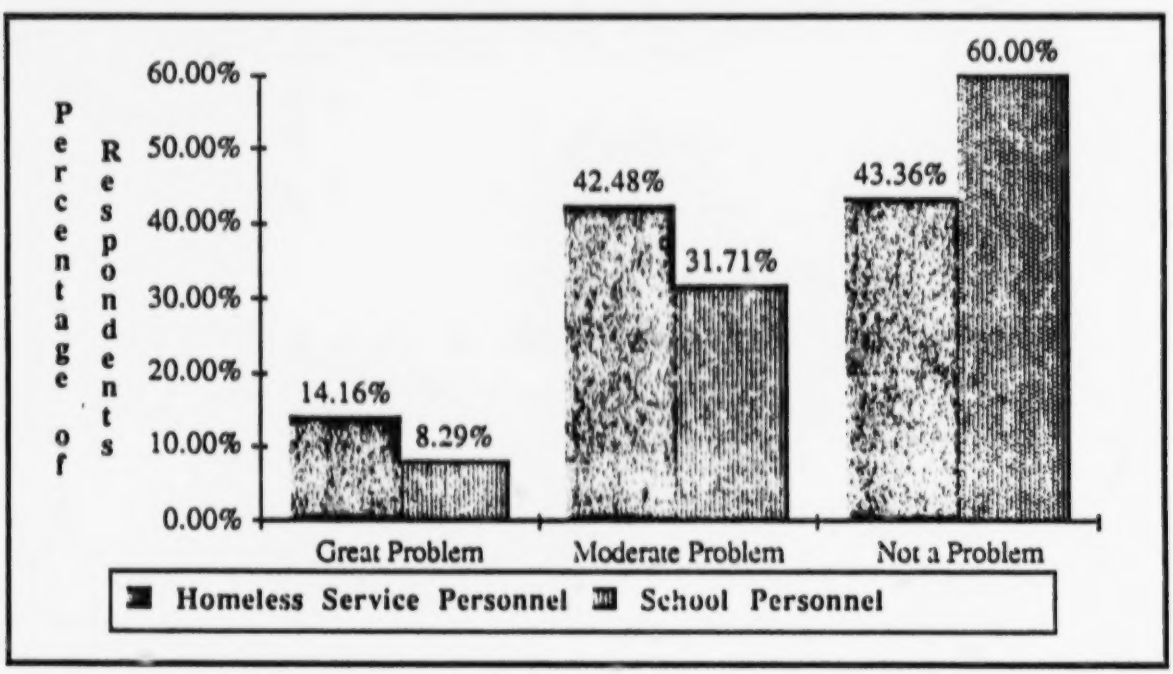

Table 2

Question: Residency requirements under state law

Respondent Group	Count	$\bar{X}$*	SD	Great Problem f	Great Problem %	Moderate Problem f	Moderate Problem %	Not a Problem f	Not a Problem %
Homeless Service Personnel	124	2.329	0.699	19	15.32%	50	40.32%	55	44.35%
School Personnel	205	2.485	0.710	26	12.68%	56	27.32%	123	60.00%

*Responses have been scaled from 1 through 3. The responses Great Problem = 1 and Not a Problem = 3. Therefore the higher the amount the lesser degree of the problem.

Figure 2

Question: Residency requirements under state law

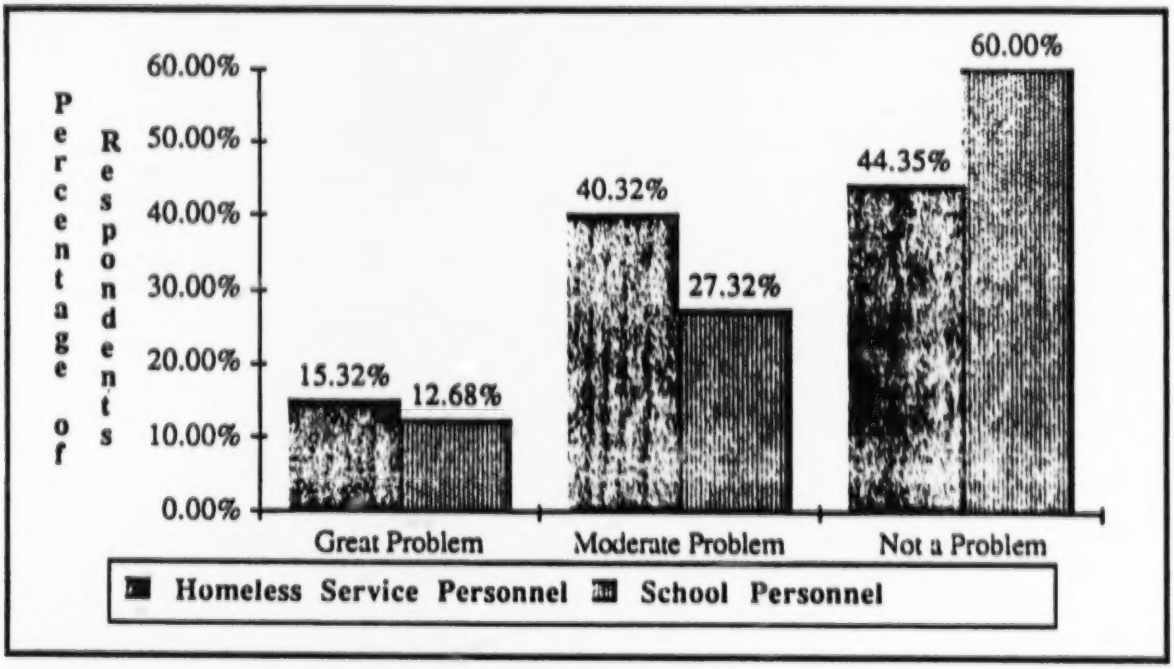

Table 3

Question: Your school district's residency requirements

Respondent Group	Count	$\bar{X}$*	SD	Great Problem f	Great Problem %	Moderate Problem f	Moderate Problem %	Not a Problem f	Not a Problem %
Homeless Service Personnel	113	2.286	0.751	23	20.35%	41	36.28%	52	43.36%
School Personnel	205	2.602	0.666	21	10.24%	41	20.00%	145	69.76%

*Responses have been scaled from 1 through 3. The responses Great Problem = 1 and Not a Problem = 3. Therefore the higher the amount the lesser degree of the problem.

Figure 3

Question: Your school district's residency requirements